

2000

State of Utah v. Pedro Luis Cruz : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee	:	
	:	Case No. 20000416-CA
vs.	:	
	:	
PEDRO LUIS CRUZ,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS FOR RAPE OF A CHILD, A FIRST DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-5-402.1 (1996), AND SEXUAL ABUSE OF A CHILD, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-5-404.1 (1998), IN THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, THE HONORABLE L. A. DEVER PRESIDING

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Counsel for Appellee

NO ORAL ARGUMENT OR PUBLISHED DECISION REQUESTED

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Salt Lake County

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Plaintiff/Appellee,	:	
vs.	:	Case No. 20000416-CA
	:	
PEDRO LUIS CRUZ	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

Defendant appeals from convictions for rape of a child, a first degree felony, in violation of UTAH CODE ANN. § 76-5-402.1 (1996), and sexual abuse of a child, a second degree felony, in violation of UTAH CODE ANN. § 76-5-404.1 (1998), in the Third Judicial District, Salt Lake County, the Honorable L. A. Dever presiding.

This matter was transferred to this Court pursuant to UTAH CODE ANN. § 78-2-2(4) (2001). R. 502. This Court has jurisdiction pursuant to UTAH CODE ANN. § 78-2a-3(2)(j) (1996).

ISSUES ON APPEAL AND STANDARDS OF REVIEW

1. Does double jeopardy bar retrial on rape and sexual abuse charges that resulted in a hung jury?

This is a question of law, reviewable for correctness. *See State v. Musselman*, 667 P.2d 1061, 1065 (Utah 1983).

2. Was defendant denied his constitutional right to a speedy trial where he belatedly asserted his right, was responsible for all delays thereafter, and demonstrated no prejudice?

This is a question of law, reviewable for correctness. *See State v. Snyder*, 932 P.2d 120, 129 (Utah App. 1997).

3. Did the trial court commit plain error when it polled the jury by asking “Is this and was this your verdict” rather than “Was this your verdict and is it still your verdict now that you’ve heard it pronounced?”

To establish plain error, defendant must show that error occurred and that it was obvious and harmful. *See State v. Ross*, 951 P.2d 236, 239 (Utah App. 1997). Whether the trial court properly polled the jury is a question of law, reviewable for correctness. *See State v. Russell*, 733 P.2d 162, 164 (Utah 1987).

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following relevant statutes and rules are reproduced in Addendum A:

UTAH CODE ANN. § 76-5-402.1 (1996);
UTAH CODE ANN. § 76-5-404.1 (1998);
Utah R. Evid. 606(b).

STATEMENT OF THE CASE

Because this appeal includes a speedy trial issue, the State will present the statement of the case as a chronology.¹

- 19 Nov. 1997 Information filed charging defendant with rape of a child, sodomy of a child, and sexual abuse of a child; arrest warrant issued. R. 1-4.
- 26 Nov. 1997 Defendant surrendered to police (date approximate); defense counsel entered his appearance; defense requested discovery. R. 5-6, 7-12, 249.
- 2 Dec. 1997 State timely responded to discovery request; defendant released to pre-trial services; defendant ordered to have no contact with victim or with any person under eighteen years of age. R. 15-18.
- 15 Jan. 1998 Preliminary hearing held; defendant bound over; arraignment scheduled for January 26, 1998. R. 23-24.
- 26 Jan. 1998 Arraignment hearing continued to February 9, 1998, upon defendant's request. R. 25-27.
- 9 Feb. 1998 Arraignment conducted; pre-trial conference scheduled for March 23, 1998; jury trial scheduled for April 2, 1998. R. 28-29.
- 2 Mar. 1998 No-bail warrant issued following defendant's violation of terms and conditions of his release. R. 32.
- 17 Mar. 1998 Pre-trial conference rescheduled on March 30, 1998, to accommodate settlement negotiations. See district court docket, Add. B.

¹The record in this case is sometimes difficult to follow. The State refers to the district court docket for clarification. On September 20, 2001, the State filed a motion to complete the record, asking this Court to order the district court to transmit the docket. This Court has not yet granted or denied the order. In the meantime, the State asks this Court to take judicial notice of this public record. In order to timely file this brief, the State has appended a copy of the district court docket in Addendum B.

- 30 Mar. 1998 Defendant's motion for continuance granted and trial rescheduled to July 28-29, 1998, to allow defendant time to prepare for State's expert witness; another pre-trial conference scheduled for July 20, 1998; defendant again released to pre-trial services and ordered to have no contact with victim or persons under eighteen years of age. R. 48-49.
- 17 July 1998 Defendant filed various motions including a second motion for a continuance to obtain more discovery. R. 79, 85, 108.
- 20 July 1998 Motion hearing held; State expressed its intention to resist motion to continue, noting prior rescheduling to permit defendant to prepare; defendant's second motion to continue denied. R. 121, R. 515, Tab 1, at 2-3.
- 23 July 1998 Trial postponed by court on its own motion because of scheduling conflict. R. 122.
- 10 Aug. 1998 Pre-trial conference scheduled for November 9, 1998; jury trial set for November 12, 1998. R. 130-131.
- 9 Nov. 1998 Trial postponed by court on its own motion because of scheduling conflict; pre-trial conference scheduled for April 12, 1998; jury trial set for April 27-28, 1999. R. 178-179.
- 26 Apr. 1999 Defendant filed motion in limine and requested exclusion of newly identified State's witness; court denied motion to exclude but granted defendant's motion to continue to prepare for newly identified witness; court (Judge Bohling) ordered counsel to approach Judge Dever for an expedited trial setting. R. 193; R. 515, Tab.3, at 1-2, 16-18; *see also* district court docket, Add. B.
- 4 May 1999 Case reassigned to Judge Dever; pre-trial conference scheduled for July 12, 1999; jury trial set for July 27-28, 1999. *See* district court docket; *see also* R. 222.
- 24 May 1999 Defendant filed motion to dismiss for lack of a speedy trial. R. 214. This was the first time defendant raised the issue.

- 27 July 1999 Jury trial set to commence, but neither defendant nor defense counsel present; notice received that defense counsel was ill and unable to try case. *See* district court docket, Add. B.
- 28 July 1999 Pre-trial conference scheduled for September 13, 1999. *See* district court docket, Add. B.
- 3 Sept. 1999 Court granted defendant a third motion for a continuance based on defense counsel's scheduling conflict and rescheduled pre-trial conference for October 4, 1999. *See* district court docket; R. 261.
- 13 Sept. 1999 Jury trial scheduled for October 14-15, 1999. *See* district court docket, Add. B.
- 8 Oct. 1999 Trial court denied defendant's motion to dismiss for lack of a speedy trial. R. 515, Tab. 4, at 14.
- 14 Oct. 1999 Jury trial commenced. *See* district court docket, Add. B.
- 18 Oct 1999 Jury returned partial verdict—not guilty on count II (sodomy on a child), hung on counts I (rape of a child) and III (sexual abuse of a child); jury trial scheduled for January 6, 2000. R. 310; *see also* district court docket, Add. B.
- 5 Jan. 2000 Defendant filed motion to dismiss remaining counts based on double jeopardy claim. R. 318.
- 21 Jan. 2000 Final pre-trial conference and hearing on defendant's motion to dismiss set for February 14, 2000. R. 326.
- 14 Feb. 2000 Pre-trial conference and hearing on motion to dismiss held; court denied defendant's motion to dismiss. *See* district court docket, Add. B.
- 15 Feb. 2000 Jury trial held. R. 355.
- 16 Feb. 2000 Jury returned guilty verdict on rape of a child and sexual abuse of a child counts; the court ordered preparation of a presentence report and scheduled sentencing for March 27, 2000. R. 355-357, 397-398.

- 23 Mar. 2000 Defendant requested a continuance of the sentencing hearing because of defense counsel's scheduling conflict. R. 413.
- 17 Apr. 2000 Defendant filed a motion to arrest judgment alleging that the evidence was insufficient to support the verdicts on either count; defendant filed a motion for a new trial alleging the court had plainly erred in the manner by which it polled the jury. R. 413, 425, 427-431.
- 20 Apr. 2000 Hearing on defendant's motions; court denied motion to arrest judgment and motion for a new trial. R. 512:7, 13.
- 1 May 2000 Defendant sentenced to prison for consecutive terms of six-years-to-life based on the rape conviction and one-to-fifteen-years on the sexual abuse conviction. R. 439.
- 3 May 2000 Defendant timely appealed. R. 449.

STATEMENT OF THE FACTS

Defendant's daughter was an eleven-year-old sixth-grader when defendant first raped her. R. 510:122-129. The victim testified to approximately five sexual encounters with her father during her eleventh and twelfth years. The fifth incident was also a rape in approximately April, 1997. *Id.* at 122, 130, 139-140.

Both rapes occurred in the bedroom defendant shared with the victim's mother. Both times the victim's mother was gone and her younger siblings were playing downstairs. *Id.* at 122, 123, 129, 135-136. The victim testified that defendant fondled and grabbed her bare breasts on the first occasion and that he placed his penis inside her vagina on both occasions. *Id.* at 125-128, 139.

The victim also testified to an incident, this time in her own bedroom, where defendant placed his penis in her mouth. *Id.* at 142-143. She testified to a fourth incident where defendant entered her room and touched her breasts and vagina. *Id.* at 144. She testified to a fifth encounter where defendant came into her room, told her to take off her shirt, and “masturbate[d] on to [a] paper towel.” *Id.* at 146.

SUMMARY OF ARGUMENT

Defendant’s argument that retrial on the “hung” rape and sexual abuse charges violated double jeopardy is inadequately briefed, frivolous, and contrary to controlling authority. Acquittal on a sodomy charge does not bar retrial for rape and sexual abuse, offenses with different elements. Even though defendant was acquitted on the sodomy charge, jeopardy had not terminated on the other two charges.

Defendant has not adequately briefed this issue. Defendant has not demonstrated a deprivation of his right to a speedy trial. Although the nearly two-year delay before the original trial was undesirable, it did not violate defendant’s constitutional right where defendant did not assert his speedy trial right until nearly eighteen months had passed, was responsible for all delays thereafter, and has not demonstrated prejudice.

Defendant has not adequately briefed his claim that the trial court erred in polling the jury. Neither has he demonstrated plain error. In any case, the trial

court properly polled the jury. The trial court was not required to explain the purpose for polling to the jury. Further, the trial court's inquiry, "Is this and was this your verdict," was sufficiently clear.²

ARGUMENT

I.

DEFENDANT HAS INADEQUATELY BRIEFED HIS DOUBLE JEOPARDY CLAIM; ACQUITTAL ON A SODOMY CHARGE DOES NOT BAR RETRIAL ON RAPE AND SEXUAL ABUSE CHARGES

Defendant was originally charged and tried on three counts: rape of a child, sodomy upon a child, and sexual abuse of a child. R. 2-3, 266. The jury acquitted defendant on the sodomy count, but was unable to return a verdict on the rape and sexual abuse charges. R. 310-317; *see also* district court docket (18 Oct. 1999), Add. B. Defendant was subsequently retried and found guilty on the remaining charges. R. 355-357.

Defendant argues that the second trial violated double jeopardy. Br. Aplt. at 35-42. He argues that "once a material Count (the sodomy count) result[ed] in an acquittal, the trial court should not . . . have allowed the State to proceed with independent prosecutions of the remaining counts." Br. Aplt. at 38.

²Defendant included in his "Statement of Issues" a claim that the evidence was insufficient to support his convictions. *See* Br. Aplt. at 2. Defendant did not discuss that claim in his argument section, and therefore the State has not addressed it. In any event, the evidence was sufficient.

A. Defendant has inadequately briefed this issue.

Because defendant has not adequately briefed this question, this Court need not reach it. Rule 24(a)(9), Utah Rules of Appellate Procedure, requires an appellant to include in his brief “the contentions and reasons . . . with respect to the issues presented . . . with citations to the authorities, statutes, and parts of the record relied on.” Under this rule, a reviewing court is “entitled to have the issues clearly defined with pertinent authority cited,” and is not “simply a depository in which the appealing party may dump the burden of argument and research.”

Monson v. Carver, 928 P.2d 1017, 1024 (Utah 1996). Utah’s appellate courts have consistently declined to address issues not adequately briefed under this rule. *See, e.g., State v. Thomas*, 961 P.2d 299, 304-305 (Utah 1998); *State v. Shepherd*, 1999 UT App 305, ¶ 27, 989 P.2d 503; *State v. Bryant*, 965 P.2d 539, 548-49 (Utah App. 1998); *State v. Yates*, 834 P.2d 599, 602 (Utah App. 1992); *State v. Price*, 827 P.2d 247, 248 (Utah App. 1992); *State v. Day*, 815 P.2d 1345, 1351 (Utah App. 1991).

Defendant’s argument on this point consists of a two conclusory sentences: “In light of the facts known to this court, it is clear that the trial court couldn’t allow the State to separately prosecute Mr. Cruz for each offense separately. Then once a material Count (the sodomy count) result[ed] in an acquittal, the trial court should not . . . have allowed the State to proceed with independent prosecutions of

the remaining counts.” Br. Aplt. 38. Defendant cites no precedent for this novel interpretation of the law. *Id.*

Although “failure to cite to pertinent authority may not always render an issue inadequately briefed, it does so when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court.” *Thomas*, 961 P.2d at 305. Here, defendant’s argument contains no analysis or development of his argument. In view of defendant’s failure to clearly set out his argument with appropriate legal analysis, this Court should decline to address this issue.³

B. Acquittal on a sodomy charge does not bar retrial on rape and sexual abuse charges that resulted in a hung jury.

Even if this Court should overlook defendant’s inadequate briefing on this point, retrial on the two counts that resulted in a hung jury does not violate due process. Double jeopardy “protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.” *United States v. DeFrancesco*, 449 U.S. 117, 129 (1980); *see also State v. Rudolph*, 970 P.2d 1221, 1230 (Utah 1998). Defendant was not acquitted or convicted on the rape and sexual abuse counts at his original trial. Accordingly, the

³Defendant cites one case on severance, *State v. Haga*, 735 P.2d 44 (Utah 1987), inapplicable here because prosecution on the three counts was conducted in a single original trial. He cites two cases on double jeopardy, *State v. Nilson*, 854 P.2d 1029 (Utah App. 1993), and *State v. Jackson*, 857 P.2d 267 (Utah App. 1993). While the cases address double jeopardy, they do not address the kind of error defendant alleges.

second prosecution was not a prosecution for the same offense after acquittal or conviction. Further, sodomy is not the same offense as rape or sexual abuse. As Utah statutory law clearly demonstrates, the elements of the offenses are different. *Compare* UTAH CODE ANN. § 76-5-403.1 (1996) *with* UTAH CODE ANN. §§ 76-5-402.1 & 76-5-404.1 (1998). Therefore, this case involves no multiple prosecution for the same offense.

Both the Utah Supreme Court and the United States Supreme Court clearly provide that retrial is not barred by double jeopardy when “the jury is unable to reach a verdict.” *Musselman*, 667 P.2d at 1065 (citing additional Utah cases); *see also Richardson v. United States*, 468 U.S. 317, 318 (1984).

Even though a defendant may have been acquitted of one of several counts, double jeopardy does not bar retrial on the remaining counts. In *Richardson*, the Supreme Court addressed the propriety of a second trial on remaining counts after acquittal of one count. The Court held that double jeopardy presented no bar because original jeopardy has not terminated as to those counts. 468 U.S. at 318. Likewise, acquittal of the sodomy charge did not terminate defendant’s jeopardy on the rape and sexual abuse counts.⁴

⁴Defendant argues that he was prejudiced by the State’s opportunity to rehearse its case at the first trial. Defendant does not acknowledge, however, that he too had an opportunity to rehearse and was better prepared to meet the State’s case and witnesses at the second trial. Neither does he address his ability to cross examine the State’s witnesses at the second trial based on their prior testimony at the first trial. *See* R. 515:7-8.

In sum, defendant's argument that retrial on the "hung" counts violates double jeopardy is inadequately briefed, frivolous, and contrary to controlling authority.

II.

DEFENDANT HAS INADEQUATELY BRIEFED HIS SPEEDY TRIAL ISSUE; DEFENDANT HAS NOT DEMONSTRATED A DEPRIVATION OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL RIGHT

A. Defendant has inadequately briefed this issue.

Defendant argues that he was denied his right to a speedy trial. Br. Aplt. at 43. Defendant again has not adequately briefed the issue, and this Court therefore need not address it. See Point I.A. Defendant rehearses some of the facts and some of the law, but does not analyze the law as applied to the facts. Defendant merely alleges that the 790 day delay "is unreasonable and is apparently unjustified by the State." Br. Aplt. at 44. He then summarily concludes, "When viewed in light of the totality of the circumstances, this Court should find that Mr. Cruz's right to a speedy trial has been violated, that he has been prejudiced by any delay and therefore the trial court should have dismissed the matter with prejudice." *Id.* "[T]he overall analysis of [this] issue" is so minimal that it "shift[s] the burden of research and argument to [this] Court," and the Court therefore need not address it. *Thomas*, 961 P.2d at 305.

B. Defendant has not demonstrated a deprivation of his constitutional right to a speedy trial.

In any case, defendant has not demonstrated that he was unconstitutionally denied his right to a speedy trial. Defendant's claim must be analyzed under the four-factor balancing test set forth in *Barker v. Wingo*, 407 U.S. 514 (1972), subsequently adopted by the Utah Supreme Court. See *State v. Ossana*, 739 P.2d 628, 630 (Utah 1987). Those four factors are "the length of the delay, the reason for the delay, the defendant's assertion of the right to a speedy trial, and the prejudice to the defendant resulting from the delay." *Id.*

The first factor to be considered is the length of the delay. Here, the length of delay between defendant's surrender to police and his original trial was almost two years, a delay sufficient to raise "legitimate questions concerning the speedy disposition of defendant's case."⁵ *Ossana*, 739 P.2d at 630. However, the delay was less than or comparable to delays that have been found insufficient to constitutionally deny defendants of their right to a speedy trial. See *id.* at 630, 632 (four and a half year delay, very little of which was attributable to "strong excuse," did not warrant quashing of information); *State v. Woodland*, 945 P.2d 665, 670 (Utah 1997) (delay of three years and one month potentially prejudicial, but not in view of other factors); *Snyder*, 932 P.2d at 130 (one year and eight month delay

⁵Defendant challenges only the delay preceding the original trial. See Br. Aplt. at 43. The State therefore does not address any delay occurring between the original trial and retrial.

undesirable, but not a denial of constitutional right to speedy trial); *State v. Leyva*, 906 P.2d 910, 912 (Utah App. 1995) (four year delay sufficient to raise concerns, but insufficient to constitute deprivation of defendant's right to speedy trial); *see also Barker*, 407 U.S. at 533 (five year delay with only seven months attributable to "strong excuse" did not work denial of constitutional right to a speedy trial).

Undesirable delay alone does not therefore necessarily demonstrate that a defendant has been denied his speedy trial right. The court must also apply the remaining factors. In this case, the second, third, and fourth factors more than counterbalance the length of the delay.

The second factor this Court must review is the reason for the delay. In analyzing this factor, different weights should be assigned to different reasons for delay. As explained in *Barker*, deliberate attempts to delay trial to hamper the defense should be weighted heavily against the prosecution. 407 U.S. at 531. Overcrowded courts present neutral reasons for delay that should be considered, but should be weighted less heavily against the prosecution. *Id.* Valid reasons, such as missing witnesses, should justify appropriate delays. *Id.*

Further, when a defendant acts to delay trial, "he indicates his willingness to temporarily waive his right to a speedy trial." *Ossana*, 739 P.2d at 631. Whether or not defendant's reasons are meritorious, those time delays cannot be counted to establish a speedy trial denial. *Id.* Additionally, where a defendant uses a delay by

the prosecution for his own purposes, “all other factors being equal, the delay cannot be weighed heavily against the prosecution.” *Id.* In this case, almost all, if not all, of the delays are attributable to defendant or to the court’s own scheduling conflicts. Little or none of the delay is attributable to the prosecution. The following delays are attributable to defendant:

- January 26 to February 9, 1998 (14 days) (arraignment continued),
- April 2 to July 28, 1998 (117 days) (continuance to facilitate defendant’s preparation to meet State’s expert witness),
- April 28 to July 27, 1999 (90 days) (continuance to facilitate defendant’s preparation to meet another State’s witness),
- July 27, 1999 to October 14, 1999 (79 days) (defense counsel ill and unable to try case and continuance to accommodate conflict in defense counsel’s schedule).

The following delays are attributable to the trial court:

- July 28 to November 12, 1998 (107 days) (court’s scheduling conflict),
- November 12, 1998 to April 28, 1999 (167 days) (court’s scheduling conflict).

One delay is apparently attributable to defendant, who agreed to it, as well as to the prosecution and the trial court:

- March 23 to March 30, 1998 (7 days) (pre-trial conference postponed to accommodate settlement negotiations).

As the chronology details, 300 days of the delay were attributable to defendant, 274 days to the court, and 7 days to all parties.

Defendant apparently argues that periods he requested to prepare responses to the two State's witnesses should not be attributable to him because the State did not timely inform him of the witnesses and their testimony. While the defendant's need to prepare may have been a meritorious reason for delays, those delays are nevertheless attributable to defendant.⁶ *See Ossana*, 739 P.2d at 631.

In this case, approximately 300 days are attributable to defendant. Defendant, like the prosecution and the courts, used one other delay to consider settlement options and that delay should be attributed to him. At the very least, it should not be weighted heavily against the prosecution. Further, while some weight may be given to the 274 days of delay due to overcrowded courts and scheduling conflicts,

⁶Defendant argued below and argues here that the two delays occasioned by continuances to allow him to prepare to meet newly identified witnesses should be charged to the State. Br. Aplt. at 6-7; R. 515, Tab 4, 6-8. The trial court denied defense motions to exclude both witnesses, and nothing in the record suggests that the State acted intentionally to delay identification of those witnesses. Assuming that the State's notification of its expert witness was late, statutory law specifically provides that "the opposing party shall be entitled to a continuance of the trial . . . to allow preparation to meet the testimony." UTAH CODE ANN. § 77-17-13(4)(a) (1999). While late identification of the witnesses may have occasioned defendant's need for a continuance and the reason for the continuance was meritorious, the continuance was nevertheless for defendant's benefit and is chargeable to him for speedy trial purposes. *See Ossana*, 739 P.2d at 631.

the weight to be given to this “neutral” factor is small. Finally, nothing in the case suggests any deliberate attempt on the part of the State to delay this case to hamper presentation of the defense.

As the foregoing analysis demonstrates, defendant was responsible for ten months of delay and the trial court for eight and a half months. The prosecution shared responsibility for, at most, seven days. The “reasons for delay” factor therefore militates against a determination that defendant was deprived of his constitutional right to a speedy trial.

The third factor to be considered is “[w]hether and how a defendant assert[ed] his right.” *Barker*, 407 U.S. at 531. “[F]ailure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.” *Id.* at 532.

Defendant here did not assert his right until May 24, 1999, 551 days after the information was filed. R. 214. Trial had been scheduled for April 27, 1999, but defendant had moved for a continuance on April 26, 1999. R. 178-179; 193; *see also* district court docket (26 Apr. 1999), Add. B. On May 4, trial was rescheduled for July 27. *See* district court docket, Add. B; *see also* R. 222. During this interim occasioned by defendant’s motion for a continuance, defendant asserted his right.

Trial was set to commence as scheduled, but on the day of trial defense counsel was ill and unable to attend. R. 222; *see also* district court docket (27 July 1999), Add. B. The following day the trial court scheduled a pre-trial conference

for September 13. *See* district court docket (28 July 1999), Add. B. On September 3, however, the court granted defendant's motion for a continuance to accommodate defense counsel's scheduling conflict and postponed the pre-trial conference until October 4. *See* district court docket; R. 261. Trial was subsequently rescheduled to and finally commenced on October 14. *See* district court docket (13 Sept. 1999), Add. B.

In sum, defendant allowed approximately eighteen months to pass before asserting his speedy trial right. Further, defendant was responsible for *all* of the delays that followed his very tardy assertion of the right. This factor also suggests that defendant suffered no constitutional deprivation.

The fourth factor is prejudice. *Barker* requires an inquiry into whether defendant was prejudiced by the delay. 407 U.S. at 530, 532. In its consideration of prejudice, the Utah Supreme Court "identified three interests to be protected: (1) preventing oppressive pretrial incarceration; (2) minimizing anxiety and concern of the accused; and (3) limiting the possibility that the defense would be impaired." *Ossana*, 739 P.2d at 631. The "prejudice associated with anxiety and concern is closely tied to a demand for a speedy trial." *Id.* at 631-632. Where "anxiety and concern [are] really prejudicial, [a] defendant [is] free to demand an expeditious trial." *Id.*

Defendant in this case spent six days in jail when he first surrendered to the police. He was incarcerated for a second period of, at most, twenty-eight days.⁷ Defendant was responsible for the second period of confinement imposed when he violated the terms of his release by contact with the victim and with other children under eighteen years of age. R. 33. Defendant need not have faced most of his brief incarceration and, in any case, did not face extensive incarceration. He was not prejudiced by “oppressive pretrial incarceration.” *Ossana*, 739 P.2d at 631.

Defendant may have suffered some minimal degree of anxiety and concern. He did not, however, make any demand for a speedy trial until May 4, 1999, approximately eighteen months after the initiation of this case. Under the precedent established in *Ossana*, defendant can establish little prejudice based on anxiety and concern where his anxiety was insufficient to motivate an earlier assertion of his right.

The most important interest associated with possible prejudice is whether the delay impaired the defendant’s ability to make his defense. *See Barker*, 407 U.S. at 532. Defendant contends that “[t]hroughout the trial witnesses claimed that they had forgotten, didn’t recall, couldn’t remember,” thus prejudicing defendant. Br. Aplt. at 44-45. Defendant has identified no memory slips on the part of his

⁷The record indicates that an arrest warrant issued on March 2, 1998, and that defendant was released to pre-trial services on March 28, 1998. The actual date of defendant’s arrest is not apparent from the record, but it could not have been earlier than March 2.

witnesses. The memory slips to which he refers are apparently those of the victim, as detailed in defendant's statement of the facts. *See* Br. Aplt. at 7-34.

Defendant was not prejudiced. The instances of fading memory at the second trial detailed by defendant in his brief concerned insignificant facts—how long defendant touched the victim's breasts, how long his penis was inside her vagina, the specific words he used in asking her to hold his penis. R. 510:125, 139-140, 156; Br. Aplt. at 22, 25, 27. “[F]ading memories concern[ing] insignificant facts” do not constitute prejudice. *Ossana*, 739 P.2d at 632. Further, where the “fading memories” were those of the State's, not defendant's witnesses, “if there was prejudice to anyone . . . it was to the prosecution, not to defendant.” *Id.*⁸

In sum, while the delay in this case was significant, the three other countervailing factors outweigh that deficiency. Defendant tardily asserted his right to a speedy trial, was responsible for all delays following that assertion, and was not prejudiced by incarceration, undue anxiety, or impairment of his defense.

⁸Defendant begins his “Statement of Fact Adduced at the Second Trial” with an allegation that he was prejudiced by the second trial because the State had “a rehearsal” at the first trial and “was better prepared to handle [its] witnesses and to address [defendant's] case and defenses.” Br. Aplt. at 22. This allegation of prejudice is unrelated to the speedy trial issue. Defendant did not challenge any delay between the first and second trials. *See* footnote 5 in foregoing analysis. Further, defendant does not acknowledge that the defense also had “a rehearsal” and was better prepared to meet the State's case and witnesses. Neither does he address his ability to cross examine the State's witnesses at the second trial based on their prior testimony at the first trial.

Defendant has not demonstrated a deprivation of his constitutional right to a speedy trial.

III.

DEFENDANT HAS NOT ADEQUATELY BRIEFED HIS JURY POLLING ISSUE; HE HAS NOT DEMONSTRATED PLAIN ERROR OR ANY ERROR; THE TRIAL COURT PROPERLY POLLED THE JURY

Defendant argues that he was effectively denied the right to trial by jury because of alleged errors in polling the jury following announcement of its verdict on retrial. Br. Aplt. at 46. Defendant alleges that the court committed plain error because (1) the court did not instruct the jury about the purposes of polling and (2) the court asked the jury “Is this and was this your verdict” instead of “Was this your verdict and is it still your verdict now that you’ve heard it pronounced.” *Id.* Defendant argues that the purpose of jury “polling is to give the jurors each an opportunity to assent to the verdict rather than just confirm what was decided in the jury room.” *Id.* at 47. Apparently, defendant argues that the trial court must so instruct the jury and so phrase its polling question to convey that even if jurors voted to convict in the jury room, they may still change their minds. *Id.* at 46-47.

A. Defendant has not adequately briefed the jury polling issue.

This issue is inadequately briefed and this Court need not consider it. See Point I.A. Defendant has cited only to Black's Law Dictionary as precedent for his interpretation of the purpose for polling.⁹

B. Defendant has not demonstrated plain error.

Further, defendant acknowledges that he did not preserve this question below and must establish plain error to prevail on this claim. Br. Aplt. at 46.¹⁰ To establish plain error, defendant must show that "(i) [a]n error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful." *State v. Dunn*, 850 P.2d 1201, 1208 (Utah 1993). Error is not obvious "where there is no settled appellate law to guide the trial court." *State v. Ross*, 951 P.2d 236, 239 (Utah App. 1997).

Error here, if any, is not obvious. Defendant points to no Utah precedent suggesting that the trial court must instruct the jury on the purpose for polling or

⁹Noting that case law on this issue is "not plentiful," defendant cites three cases for this Court's "consideration"—*Davis v. State*, 160 S.E.2d 697 (N.C. 1968); *State v. Cleveland*, 78 A.2d 560 (N.J. 1951); and *Commonwealth v. Martin*, 109 A.2d 325 (Pa. 1954). Br. Aplt. at 47 While all of the cases address jury polling issues, none addresses a polling inquiry similar to the inquiry in this case. None requires the trial court to explain the purpose of polling to the jury or to use the words defendant proposes.

¹⁰Defendant raises this claim under the plain error doctrine, and the State addresses the claim in that posture. The State observes, however, that while defendant waived the polling issue, the trial court considered the alleged error at a hearing on defendant's motion for a new trial, perhaps resuscitating the issue. See R. 512:7; *State v. Seale*, 853 P.2d 862, 870 (Utah 1993).

must phrase its polling question in the form defendant favors. Further, Utah precedent states that “[t]he purpose of polling is to determine that the verdict signed by the foreman is that of the individual jurors and not one that has been coerced or caused by mistake.” *Russell*, 733 P.2d at 164. The trial court phrased its polling question so that the jurors knew that they could not be held to a verdict to which they had not agreed.

Moreover, nothing properly in the record demonstrates harm.¹¹

C. The trial court properly polled the jury.

Finally, even if, as defendant alleges, the polling question must convey to a juror that she is entitled to change her mind after the jury reaches its verdict, but before polling, the trial court’s phrasing was sufficiently clear. “Is this and was this your verdict” requires a negative response if the juror did not assent to the verdict at the conclusion of jury deliberations *or*, even if the juror did assent, she has

¹¹Defendant includes in his brief as Addendum B the affidavit of juror Deanne James, undated but included in the record at 432-435, immediately following and perhaps originally attached to defendant’s motion for a new trial and supporting memorandum. This court should not consider the affidavit because (1) the trial court did not consider it, (2) the affidavit was improper and inadmissible under Rule 606(b), Utah Rules of Evidence, and (3) the affidavit makes clear that the verdict was not coerced. Rule 606(b) states: “[A] juror may not testify . . . to the effect of anything . . . as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processes in connection therewith,” except for improper outside influences. The rule also precludes a juror’s affidavit concerning these matters. *See id.*; *see also State v. Couch*, 635 P.2d 89, 95 (Utah 1981) (affidavit regarding juror’s reasoning inadmissible).

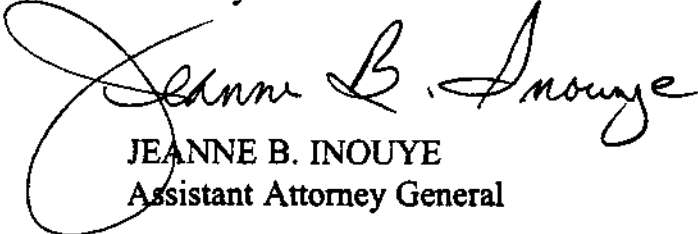
changed her mind prior to polling.¹² Defendant makes a distinction without a difference. Any difference between the polling query as phrased by the court and as proposed by the defendant is illusory.

CONCLUSION

Defendant's conviction should be affirmed.

RESPECTFULLY submitted on Sept. 27, 2001.

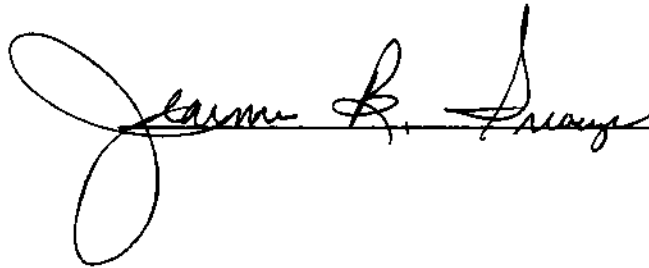
MARK L. SHURTLEFF
Attorney General


JEANNE B. INOUE
Assistant Attorney General

¹²If, during polling, a juror manifests some hesitancy about the verdict, the trial court may have the duty to ascertain the juror's state of mind at the time of polling. See *State v. Heaps*, 2000 UT 5, ¶¶ 15-16, 999 P.2d 565; 5 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 24.9(e) (2d ed. 1999).

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were either mailed, postage prepaid, or hand-delivered to D. Bruce Oliver, Attorney for Appellant, 180 South 300 West, Suite 210, Salt Lake City, UT 84101-1490, this 27th day of Sept., 2001.

A handwritten signature in black ink, appearing to read "James R. Franks". The signature is written in a cursive style with a large, looping initial "J" and a horizontal line extending from the middle of the signature.

ADDENDA

Addendum A

76-5-402.1. Rape of a child.

(1) A person commits rape of a child when the person has sexual intercourse with a child who is under the age of 14.

(2) Rape of a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section **76-3-406**.

Amended by Chapter 40, 1996 General Session

Download Code Section Zipped WP 6/7/8 76_05048.ZIP 2,145 Bytes

[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Thursday, July 12, 2001

76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.

(1) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child younger than 14 years of age, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(2) Sexual abuse of a child is punishable as a second degree felony.

(3) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (1) any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;

(b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;

(c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;

(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;

(e) the accused, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense;

(f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;

(g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;

(h) the offense was committed by a person who occupied a position of special trust in relation to the victim; "position of special trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, baby-sitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;

(i) the accused encouraged, aided, allowed, or benefited from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person; or

(j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

(4) Aggravated sexual abuse of a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than five years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

Amended by Chapter 131, 1998 General Session

Download Code Section Zipped WP 6/7/8 76_05054.ZIP 3,861 Bytes

[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Thursday, July 12, 2001

Advisory Committee Note. — This rule is the federal rule, verbatim, and is comparable to Rule 42, Utah Rules of Evidence (1971) except that under Rule 42, it is incumbent upon a party to object to the judge testifying. Compare

Utah Code Annotated, § 78-24-3 (1953).

Cross-References. — Judge or juror called as witness, § 78-24-3.

Objections, Rule 12, U.R.C.P.

COLLATERAL REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d Witnesses § 101.

C.J.S. — 97 C.J.S. Witnesses § 105.

A.L.R. — Disqualification of judge on ground of being a witness in the case, 22 A.L.R.3d 1198.

Rule 606. Competency of juror as witness.

(a) *At the trial.* A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) *Inquiry into validity of verdict or indictment.* Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes. (Amended effective October 1, 1992.)

Advisory Committee Note. — This rule is the federal rule, verbatim, and comports with Rules 41 and 44, Utah Rules of Evidence (1971), and Utah case law, *State v. Gee*, 28 Utah 2d 96, 498 P.2d 662 (1972).

Cross-References. — Judge or juror may be witness, § 78-24-3.

Jurors, Rule 47, U.R.C.P.

Misconduct of jury, proof by juror's affidavit, Rule 59(a)(2), U.R.C.P.

NOTES TO DECISIONS

Validity of verdict or information.

— Outside influence.

Cited.

Validity of verdict or information.

Evidence by affidavit or testimony of a juror will not be received to impeach or question the jury verdict or to show the grounds upon which it was rendered, or to show their misunderstanding of fact or law, or that they misunderstood the charge of the court, or the effect of their verdict, or their opinions, surmises and processes of reasoning in arriving at a verdict. *State v. Gee*, 28 Utah 2d 96, 498 P.2d 662 (1972).

Testimony of a juror that there was discussion in the jury room to the effect that the defendant did not testify and thus the jury was under the impression that he might have been guilty constituted evidence as to the alleged mental processes by which the jury arrived at a verdict of guilty and was inadmissible for the purpose of impugning the verdict upon a motion for new trial. *State v. Gee*, 28 Utah 2d 96, 498 P.2d 662 (1972).

Losing party in negligence suit could not

impeach verdict by affidavits from some jurors stating that jury was confused regarding law as stated in instructions. *Johnson v. Simons*, 551 P.2d 515 (Utah 1976).

Where the affidavit of a juror did not allege that the verdict had been determined "by chance or as a result of bribery" as required to warrant a new trial under U.R.C.P. 59(a)(2), the trial court properly refused to receive the affidavit into evidence. *State v. Couch*, 635 P.2d 89 (Utah 1981).

The only evidence admissible to impeach a jury verdict is that which demonstrates that the verdict was determined by chance or resulted from bribery; all other proof as to what was said or done in the jury room, including evidence that the jury was confused or that it misunderstood or disregarded the facts or the applicable law, is inadmissible as violative of the long-standing policy against attempts to undermine the integrity of verdicts. *Groen v. Tri-O-Inc.*, 667 P.2d 598 (Utah 1983).

— Outside influence.

A juror's affidavit revealing that some jury members were influenced by one member's re-

Addendum B

Toggle Case History
Run Case History report for highlighted Case Running Report ...
Displaying Report

THIRD DISTRICT COURT SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. PEDRO LUIS CRUZ

CASE NUMBER 971021252 State Felony

CHARGES

Charge 1 - 76-5-402.1 - RAPE OF A CHILD
1st Degree Felony Plea: February 12, 1998 Not Guilty
Disposition: February 16, 2000 Guilty
Charge 2 - 76-5-403.1 - SODOMY ON A CHILD
1st Degree Felony Plea: February 12, 1998 Not Guilty
Disposition: October 18, 1999 Not Guilty
Charge 3 - 76-5-404.1 - SEX ABUSE CHILD
2nd Degree Felony Plea: February 12, 1998 Not Guilty
Disposition: February 16, 2000 Guilty

CURRENT ASSIGNED JUDGE
PAUL G. MAUGHAN

casehist.900 (1%)[Press space to continue, q to quit, h for help]PARTIES

Defendant - PEDRO LUIS CRUZ
Represented by: D BRUCE OLIVER

Plaintiff - STATE OF UTAH

DEFENDANT INFORMATION

Defendant Name: PEDRO LUIS CRUZ
Offense tracking number: 0
Date of Birth: March 21, 1954
Jail Booking Number:
Law Enforcement Agency: SALT LAKE POLICE
LEA Case Number: 97-73015

Prosecuting Agency: SALT LAKE COUNTY

Agency Case Number:

Sheriff Office Number: 224753

Violation Date: July 01, 1997

ACCOUNT SUMMARY

TOTAL REVENUE Amount Due: 2,187.75
casehist.900 (2%)[Press space to continue, q to quit, h for help] Amount
Paid: 2,187.75
Credit: 0.00
Balance: 0.00

TRUST TOTALS Trust Due: 264.39
Amount Paid: 0.00
Credit: 0.00

Printed: 09/18/01 08:12:51 Page 1
^L
CASE NUMBER 971021252 State Felony

Trust Balance Due: 264.39
Balance Payable: 0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due: 350.00
casehist.900 (2%)[Press space to continue, q to quit, h for help] Amount
Paid: 350.00
Amount Credit: 0.00
Balance: 0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due: 137.50
Amount Paid: 137.50
Amount Credit: 0.00

Balance: 0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due: 146.25
Amount Paid: 146.25
Amount Credit: 0.00
Balance: 0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Original Amount Due: 14,449.00
Amended Amount Due: 0.00
Amount Paid: 0.00
Amount Credit: 0.00
Balance: 0.00

casehist.900 (4%)[Press space to continue, q to quit, h for help]
Adjustments

Account

Date	Amount	Reason
Dec 05, 2000	-14,449.00	Reversal of transaction which created the account.

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due: 45.50
Amount Paid: 45.50
Amount Credit: 0.00
Balance: 0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due: 1,449.00
Amount Paid: 1,449.00
Amount Credit: 0.00
Balance: 0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due: 59.50
Amount Paid: 59.50

casehist.900 (5%)[Press space to continue, q to quit, h for help]

^L

CASE NUMBER 971021252 State Felony

Amount Credit: 0.00
Balance: 0.00

TRUST DETAIL

Trust Description: Interest on Rstitutn
Recipient: SALT LAKE POLICE DEPT
Amount Due: 14.39
Paid In: 0.00
Paid Out: 0.00

Account Adjustments

Date	Amount	Reason
Jan 30, 2001	14.39	Interest Posted to Date

TRUST DETAIL

Trust Description: Restitution
casehist.900 (6%)[Press space to continue, q to quit, h for help] Recipient:
SALT LAKE POLICE DEPT
Amount Due: 250.00
Paid In: 0.00
Paid Out: 0.00

CASE NOTE

DA0 #97019713

PROCEEDINGS

11-19-97 Warrant ordered on: November 19, 1997 Warrant Num: 971040078

Bail Allowed

Bail amount: 100000.00

11-19-97 Warrant issued on: November 19, 1997 Warrant Num: 971040078

Bail Allowed

Bail amount: 100000.00

Judge: WILLIAM W. BARRETT

Issue reason: Failure to Appear.

11-19-97 Case filed

11-19-97 Note: CASE FILED BY DET CHANDLER SLCPD

robertt

11-26-97 Note: FILED APPEARANCE OF COUNSEL - D BRUCE OLIVER

lauraj

11-26-97 Note: FILED REQUEST FOR DISCOVERY

lauraj

12-02-97 Arraignment scheduled on December 02, 1997 at 09:30 AM in

casehist.900 (7%)[Press space to continue, q to quit, h for help]

Arraignment - S31

with Judge ARRAIGNMENT.

-convert

12-02-97 Minute Entry - Minutes for Initial Appearance

lauraj

Judge: SHEILA K MCCLEVE

PRESENT

Clerk: lauraj

Prosecutor: PAUL PARKER

Defendant

Defendant's Attorney(s): D BRUCE OLIVER

Audio

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^L

CASE NUMBER 971021252 State Felony

Tape Number: 2552 Tape Count: 467

INITIAL APPEARANCE

casehist.900 (8%)[Press space to continue, q to quit, h for help]

A copy of the Information is given to the defendant.

Defendant waives reading of Information.

Defendant advised of charges and penalties.

DEFT TO BE RELEASED TO PTS ON CONDITIONS: 1) NO CONTACT
THROUGH

ANY MEDIUM WITH THE ALLEGED VICTIM; 2) NO CONTACT
(SUPERVISED OR

UNSUPERVISED) WITH ANY PERSON UNDER AGE 18; 3) MAINTAIN
GAINFUL

EMPLOYMENT; 4) ATTEND VENTNOR AND FIRST CHANCE CLASS.

CALENDAR ROLL CALL is scheduled.

Date: 12/16/1997

Time: 09:00 a.m.

Location: To Be Determined

Third District Court

451 South 200 East

Salt Lake City, UT 84111

before Judge JUDGE HILDER

12-02-97 CALENDAR ROLL CALL scheduled on December 16, 1997 at 09:00 AM
in To Be Determined with Judge HILDER. lauraj

12-03-97 Note: filed pretrial release agreement lauraj

12-12-97 Warrant recalled on: December 12, 1997 Warrant num: 971040078

Recall reason: Warrant recalled because defendant was
booked.

12-15-97 Filed: STATE'S RESPONSE TO REQUEST FOR DISCOVERY

lauraj

casehist.900 (10%)[Press space to continue, q to quit, h for help]12-16-97 Prelim

Injunction scheduled on January 15, 1998 at 09:00 AM in

Third Floor - W39 with Judge HUTCHINGS.

lindaps

12-16-97 Minute Entry - Minutes for Roll Call

lindaps

Judge: ANN BOYDEN

PRESENT

Clerk: lindaps

Prosecutor: COPE, FOR ATKIN

Defendant

Defendant's Attorney(s): D BRUCE OLIVER

Audio

Tape Number: 2587 Tape Count: 15

HEARING

TAPE: 2587 TIME: 9:51 AM COUNT: 15

Court Orders Case set for Preliminary Hearing

PRELIM INJUNCTION is scheduled.

Date: 01/15/1998

Time: 09:00 a.m.

Location: 5th Floor Room 502

Third District Court

451 South 200 East

casehist.900 (12%)[Press space to continue, q to quit, h for help]

^L

CASE NUMBER 971021252 State Felony

Salt Lake City, UT 84111
before Judge MICHAEL L HUTCHINGS
01-15-98 Minute Entry - Minutes for Preliminary Hearing ginam
Judge: MICHAEL L HUTCHINGS
PRESENT
Clerk: ginam
Prosecutor: MARSHA ATKIN
Defendant
Defendant's Attorney(s): D BRUCE OLIVER

Audio

Tape Number: 136 Tape Count: 2519

casehist.900 (13%)[Press space to continue, q to quit, h for help] HEARING

TAPE: 136 COUNT: 2519

Defendant waives the reading of the Information

Exclusionary rule invoked

States first witness Carmalita Cruz sworn and testified

Cross

Court finds probable cause to bind case over to Division I on
January 26, 1998 at 1:30 pm before Judge Bohling.

ARRAIGNMENT is scheduled.

Date: 01/26/1998

Time: 01:30 p.m.

Location: 3rd Floor Room 302

Third District Court

240 East 400 South

Salt Lake City, UT 84111

before Judge WILLIAM B BOHLING

01-15-98 Judge BOHLING assigned. ginam

01-15-98 Arraignment scheduled on January 26, 1998 at 01:30 PM in Fourth
Floor - W42 with Judge BOHLING. ginam

01-22-98 ARRAIGNMENT rescheduled on February 09, 1998 at 01:30 PM

Reason: ATD requested continuance.. melbar
01-26-98 Minute Entry - Minutes for Law & Motion melbar
casehist.900 (15%)[Press space to continue, q to quit, h for help] Judge:

WILLIAM B BOHLING

PRESENT

Clerk: melbar

Defendant not present

Defendant's Attorney(s): D BRUCE OLIVER

Video

HEARING

Off record Arraignment hearing is continued on stipulation of
counsel, to 2/9/98 at 1:30 P.M.

Printed: 09/18/01 08:12:56 Page 5

^L

CASE NUMBER 971021252 State Felony

casehist.900 (16%)[Press space to continue, q to quit, h for help]02-04-98 Filed order:
Motion and Order For Continuance of Arraignment

(to 2-9-98, 1:30 P.M.)

melbar

Judge wbohling

Signed January 30, 1998

02-09-98 PRETRIAL CONFERENCE scheduled on March 23, 1998 at 01:30 PM in

Fourth Floor - W42 with Judge BOHLING.

melbar

02-09-98 Minute Entry - Minutes for INCOURT NOTE

melbar

Judge: WILLIAM B BOHLING

PRESENT

Clerk: melbar

Reporter: KATHY SCHULTZ

Prosecutor: BLAKE NAKAMURA

Defendant

Defendant's Attorney(s): D BRUCE OLIVER

Video

PRETRIAL CONFERENCE is scheduled.

Date: 03/23/1998

Time: 01:30 p.m.

Location: 3rd Floor Room 302

Third District Court

240 East 400 South

casehist.900 (18%)[Press space to continue, q to quit, h for help]
City, UT 84111

Salt Lake

before Judge WILLIAM B BOHLING

JURY TRIAL.

Date:

Date: 4/2/98

Time: 09:30 a.m.

Location: 3rd Floor Room 302

Third District Court

240 East 400 South

Salt Lake City, UT 84111

before Judge WILLIAM B BOHLING

Date: 4/3/98

Time: 09:30 a.m.

Location: 3rd Floor Room 302

Third District Court

240 East 400 South

Salt Lake City, UT 84111

before Judge WILLIAM B BOHLING

02-12-98 Notice - NOTICE for Case 971021252 ID 44184

melbar

PRETRIAL CONFERENCE is scheduled.

Date: 03/23/1998

casehist.900 (19%)[Press space to continue, q to quit, h for help]
p.m.

Time: 01:30

Location: 3rd Floor Room 302

Third District Court

^L

CASE NUMBER 971021252 State Felony

240 East 400 South
Salt Lake City, UT 84111
before Judge WILLIAM B BOHLING

JURY TRIAL.

Date: 4/2/98

Time: 09:30 a.m.

Location: 3rd Floor Room 302

Third District Court

240 East 400 South

casehist.900 (20%)[Press space to continue, q to quit, h for help]
City, UT 84111

Salt Lake

before Judge WILLIAM B BOHLING

Date: 4/3/98

Time: 09:30 a.m.

Location: 3rd Floor Room 302

Third District Court

240 East 400 South

Salt Lake City, UT 84111

before Judge WILLIAM B BOHLING

03-02-98 Filed: Affidavit in Support of Request for Revocation (on
violation, Pretrial Services), and for Bench Warrant, approved
by the Court. melbar

03-02-98 Warrant ordered on: March 02, 1998 Warrant Num: 972008970 No
Bail karib

03-02-98 Warrant issued on: March 02, 1998 Warrant Num: 972008970 No
Bail karib

Judge: WILLIAM B. BOHLING

Issue reason: The defendant failed to comply with the
Court's order.

03-02-98 Minute Entry - Minutes for Law & Motion melbar

Judge: WILLIAM B BOHLING

Clerk: melbar

casehist.900 (21%)[Press space to continue, q to quit, h for help] Video

HEARING

Off record Based on recommendation of Pretrial Services the Court orders that a no-bail bench warrant issue for Pedro Luis Cruz, on violation of terms and conditions of release.l

03-02-98 Notice - WARRANT for Case 971021252 ID 54723 karib
03-17-98 PRETRIAL CONFERENCE rescheduled on March 30, 1998 at 01:30 PM
Reason: Settlement negotiations. melbar
03-25-98 Filed: (State of Utah's) Notice of Expert Witnesses bekiy
03-30-98 Minute Entry - Minutes for Pretrial Conference bekiy
Judge: WILLIAM B BOHLING
PRESENT
Clerk: bekiy
Reporter: KATHY SCHULTZ

Printed: 09/18/01 08:13:03 Page 7

^L

casehist.900 (23%)[Press space to continue, q to quit, h for help]CASE NUMBER
971021252 State Felony

Prosecutor: MARSHA ATKIN
Defendant
Defendant's Attorney(s): D BRUCE OLIVER

CAT/CIC

HEARING

On record
This matter is before the Court for a Pre-Trial Conference
The Jury Trial is this matter is currently scheduled for April
2-3, 1998 @ 9:30 AM.
The Court hears argument re: the Defendant's Motion for Additional
Medical Testing (of Victim), and Defendant's Motion to continue
trial, which is predicated upon the Court's ruling on the Motion

for Additional Testing.

The Court denies the Motion for Additional Testing.

The Court then hears argument from both counsel re: the Defendant's Objection to and Motion to Exclude State's Expert Witness.

casehist.900 (25%)[Press space to continue, q to quit, h for help] The Court denies the objection to the expert witness, but the

Court will continue the trial date, to allow Defendant's counsel time to prepare for the State's expert witness.

THE JURY TRIAL IS RESCHEDULED TO JULY 28-29, 1998 @ 9:00 am (2 days).

ANOTHER PRE-TRIAL CONFERENCE IS SCHEDULED FOR JULY 20, 1998 @ 1:30 PM.

The Court hears from both counsel re: Defendant's present incarceration. The Defendant was previously released through Pre-Trial Services, but was recently incarcerated for violating the no contact order.

The District Attorney has no objection to Defendant being re-released through Pre-Trial Services.

The Court orders that the Defendant be released from jail, forthwith, through Pre-Trial Services. The Court stresses to the Defendant that the Defendant is to have no contact with the victim or any child under the age of 18 years.

If the victim or her family attempt to contact the Defendant, the Defendant is to refuse to see them, and the Defendant is to report this to his counsel, as soon as possible.

The District Attorney will talk with the victim and her family and explain that the Defendant is ordered by the Court to have no contact with the victim, or her family.

casehist.900 (27%)[Press space to continue, q to quit, h for help] The Court orders that the Defendant be released from jail, forthwith, through Pre-Trial Services.

The existing outstanding Bench Warrant is recalled.

CC: faxed to S.L. Co. Jail (3/30/98)

03-30-98 Filed: (Def's) Motion to Update Code R Examination beckiy
03-30-98 Filed: (Def's) Motion for Continuance beckiy

^L

CASE NUMBER 971021252 State Felony

03-30-98 Filed: (Def's) Objection and Motion to Exclude Expert Witnessesbeckiy

03-30-98 Filed: Memorandum in Support of Motion to Exclude Expert

Witnesses

beckiy

03-30-98 JURY TRIAL (2 DAYS) scheduled on July 28, 1998 at 09:00 AM in

Fourth Floor - W42 with Judge BOHLING.

beckiy

03-30-98 JURY TRIAL (2ND & FINAL DAY) scheduled on July 29, 1998 at

09:00 AM in Fourth Floor - W42 with Judge BOHLING.

beckiy

casehist.900 (28%)[Press space to continue, q to quit, h for help]03-30-98 PRE-TRIAL

CONFERENCE scheduled on July 20, 1998 at 01:30 PM in

Fourth Floor - W42 with Judge BOHLING.

beckiy

03-31-98 Note: Party 3317787 DEF

Custody changed from Jail

Location changed from Salt Lake County Jail

beckiy

04-01-98 Filed: Order of Release

beckiy

04-01-98 Warrant recalled on: April 01, 1998 Warrant num: 972008970

Recall reason: Warrant recalled because defendant was
booked.

04-01-98 Note: FILED PRETRIAL RELEASE AGREEMENT

lauraj

07-17-98 Filed: (Def's) Motion to Consolidate Counts

beckiy

07-17-98 Filed: Memorandum of Points and Authorities in Support of

Motion to Consolidate Counts

beckiy

07-17-98 Filed: (Def's) Motion to Compel Discovery and For Trial

Continuance

beckiy

07-17-98 Filed: Memorandum of Points and Authorities in Support of

Motion to Compel Discovery and For Trial Continuance

beckiy

07-17-98 Filed: (Def's) Motino in Limine Re: Admissibility of Witness

Testimony and Reliability

beckiy

07-17-98 Filed: Memorandum of Points and Authorities in Support of

Motion in Limine Re: Admissibility of Witness TEstimony and

Reliability

beckiy

07-20-98 Minute Entry - Minutes for Pretrial Conference

melbar

casehist.900 (30%)[Press space to continue, q to quit, h for help]

Judge:

WILLIAM B BOHLING

PRESENT

Clerk: melbar

Prosecutor: MARSHA ATKIN

Defendant
Defendant's Attorney(s): D BRUCE OLIVER

Video
Tape Number: 1:58 P.M.

HEARING

TAPE: 1:58 P.M. On record This case is to go to trial as set on
7-28-98 at 9:00 A.M. The Court having denied defendant counsel's
motion to continue to obtain more discovery from the State.

07-23-98 Minute Entry - Minutes for Law & Motion melbar
Judge: WILLIAM B BOHLING
Clerk: melbar
Video

casehist.900 (32%)[Press space to continue, q to quit, h for help]

Printed: 09/18/01 08:13:06 Page 9

^L

CASE NUMBER 971021252 State Felony

HEARING

TIME: 5:26 PM Off record The Court on it's own motion continues
the Jury Trial of 7/28/98 because of a scheduling conflict. Mr.
Oliver was reached by the Clerk by telephone today. Ms. Atkin was
unable at this late hour to reach, further attempts will be made
7/27/98.

PRETRIAL CONF/TRIAL SETTING is scheduled.

Date: 08/10/1998

Time: 01:30 p.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

before Judge WILLIAM B BOHLING

07-23-98 PRETRIAL CONF/TRIAL SETTING scheduled on August 10, 1998 at
casehist.900 (33%)[Press space to continue, q to quit, h for help] 01:30 PM in
Fourth Floor - W42 with Judge BOHLING. melbar
07-23-98 Jury Trial Cancelled.
07-23-98 Jury Trial Cancelled.
07-27-98 Filed: (State's) Objection to Defendant's Motion to Consolidate
Counts bekiy
07-27-98 Filed: (State's) Objection to Defendant's Motion to Compel
Discovery and for Trial Continuance bekiy
07-27-98 Filed: (State's) Objection to Defendant's Motion in Limine Re:
Admissibility of Witness Testimony and Reliability bekiy
08-10-98 PRETRIAL CONFERENCE scheduled on November 09, 1998 at 01:30 PM
in Fourth Floor - W42 with Judge BOHLING. melbar
08-10-98 JURY TRIAL scheduled on November 12, 1998 at 09:00 AM in Fourth
Floor - W42 with Judge BOHLING. melbar
08-10-98 JURY TRIAL scheduled on November 13, 1998 at 09:00 AM in Fourth
Floor - W42 with Judge BOHLING. melbar
08-10-98 Minute Entry - Minutes for INCOURT NOTE melbar
Judge: WILLIAM B BOHLING
PRESENT
Clerk: melbar
Prosecutor: MARSHA ATKIN
Defendant
Defendant's Attorney(s): D BRUCE OLIVER

casehist.900 (35%)[Press space to continue, q to quit, h for help] Video

PRETRIAL CONFERENCE is scheduled.

Date: 11/09/1998

Time: 01:30 p.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

CASE NUMBER 971021252 State Felony

before Judge WILLIAM B BOHLING

JURY TRIAL.

Date:

casehist.900 (36%)[Press space to continue, q to quit, h for help]

Date: 11/12/98

Time: 09:00 a.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

before Judge WILLIAM B BOHLING

Date: 11/13/98

Time: 09:00 a.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

before Judge WILLIAM B BOHLING

08-11-98 Notice - NOTICE for Case 971021252 ID 149853

melbar

PRETRIAL CONFERENCE is scheduled.

Date: 11/09/1998

Time: 01:30 p.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

casehist.900 (37%)[Press space to continue, q to quit, h for help]
WILLIAM B BOHLING

before Judge

JURY TRIAL.

Date: 11/12/98

Time: 09:00 a.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

before Judge WILLIAM B BOHLING

Date: 11/13/98

Time: 09:00 a.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

before Judge WILLIAM B BOHLING

10-09-98 Filed: Notice of Expert Witness

brandyk

10-23-98 Filed: Objection to Defendant's Notice of Expert Witness

brandyk

11-09-98 Minute Entry - Jury Trial continued

melbar

Judge: WILLIAM B BOHLING

casehist.900 (39%)[Press space to continue, q to quit, h for help]

Printed: 09/18/01 08:13:09

Page 11

^L

CASE NUMBER 971021252 State Felony

PRESENT

Clerk: melbar

Prosecutor: ATKIN, MARSHA S

Defendant

Defendant's Attorney(s): OLIVER, D BRUCE

Video

CONTINUANCE

The Court has made a motion for continuance of Jury Trial.

The motion is granted.

Scheduling conflict on the Court's calendar.

JURY TRIAL is scheduled.

casehist.900 (40%)[Press space to continue, q to quit, h for help]

Date: 4/27/99

Time: 09:00 a.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860
before Judge WILLIAM B BOHLING

JURY TRIAL.

Date: 4/28/99

Time: 09:00 a.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

before Judge WILLIAM B BOHLING

PRETRIAL CONFERENCE.

Date: 04/12/1999

Time: 01:30 p.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

casehist.900 (41%)[Press space to continue, q to quit, h for help]
84111-1860

SLC, UT

before Judge WILLIAM B BOHLING

PRETRIAL CONFERENCE.

Date: 4/28/99

Time: 09:00 a.m.

Location: Fourth Floor - W42

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

before Judge WILLIAM B BOHLING

11-09-98 JURY TRIAL scheduled on April 27, 1999 at 09:00 AM in Fourth

Printed: 09/18/01 08:13:10 Page 12

^L

CASE NUMBER 971021252 State Felony

Floor - W42 with Judge BOHLING. melbar
casehist.900 (42%)[Press space to continue, q to quit, h for help]11-09-98 JURY TRIAL
scheduled on April 28, 1999 at 09:00 AM in Fourth

Floor - W42 with Judge BOHLING. melbar
11-09-98 PRETRIAL CONFERENCE scheduled on April 12, 1999 at 01:30 PM in
Fourth Floor - W42 with Judge BOHLING. melbar

11-10-98 JURY TRIAL Continued.

11-10-98 PRETRIAL CONFERENCE Continued.

03-05-99 Filed: Notice of Expert Witness (Supplemental)

brandyk

04-12-99 Minute Entry - Minutes for INCOURT NOTE

melbar

Judge: WILLIAM B BOHLING

PRESENT

Clerk: melbar

Prosecutor: ATKIN, MARSHA S

Defendant

Defendant's Attorney(s): OLIVER, D BRUCE

Video

Tape Number: 2:04 PM

Trial of 4/27/99 is to go forward as set, as no resolution is
obtained.

04-12-99 Filed: Request for Court Reporter for jury trial 4-27-99.

melbar

04-26-99 Minute Entry - Minutes for MOTION IN LIMINE

melbar

Judge: WILLIAM B BOHLING

casehist.900 (44%)[Press space to continue, q to quit, h for help]

PRESENT

Clerk: melbar

Prosecutor: ATKIN, MARSHA S

Defendant not present

Defendant's Attorney(s): OLIVER, D BRUCE

Video

Tape Number: 11:14 A.M.

HEARING

TAPE: 11:14 A.M. On record Defendant's Motion in Limine and
Defendant's Objection to Expert Witness, is before the Court.

The Court after hearing argument of counsel and having read the
memoranda as submitted, the Court denies the motion to exclude and

will allow the State's new witness to testify. The witness is to be made available to defendant counsel.

Defendant makes a motion to continue based on the granting of motion to allow the State's witness to testify. The Court grants the motion to continue and orders counsel to approach Judge Dever for an expedited trial setting.

The State on request of defendant counsel will prepare a written casehist.900 (46%)[Press space to continue, q to quit, h for help] statement of the new witness.

Defendant's reports of expert witnesses are to be submitted to the

Printed: 09/18/01 08:13:14 Page 13

^L

CASE NUMBER 971021252 State Felony

State by 6-25-99.

04-26-99 Filed: Request for Expedited Hearing via Phone Conference melbar

04-26-99 Filed: Objection to Motion in Limine melbar

04-26-99 Filed: Memorandum of Points and Authorities in Support of

Motion in Limine melbar

04-26-99 Filed: Objection to Defendant's Notice of Expert Witness

(Supplemental) melbar

04-26-99 Filed: Response to Defendant's Objection to Motion in Limine melbar

05-04-99 Judge DEVER assigned. melbar

05-06-99 SCHEDULING CONFERENCE scheduled on May 12, 1999 at 08:30 AM in

Third Floor - W37 with Judge DEVER. audreyj

casehist.900 (47%)[Press space to continue, q to quit, h for help]05-12-99 Minute Entry -

Minutes for SCHEDULING CONFERENCE audreyj

Judge: L. A. DEVER

PRESENT

Clerk: audreyj

Prosecutor: NAKAMURA FOR YBARRA

Defendant

Defendant's Attorney(s): D BRUCE OLIVER

Video

Tape Number: video Tape Count: 5-12-99

HEARING

TAPE: video COUNT: 5-12-99

Case scheduled for trial on 7-27-99 and 7-28-99.

Any pretrial motions to be filed by 6-1-99 and State will have until 6-21-99 to respond.

If filed, these motions will be heard on 7-12-99 at 10:30 am.

Court requests that counsel file jury instructions by 7-21-99.

JURY TRIAL is scheduled.

Date: 07/27/1999

Time: 09:00 a.m.

Location: Third Floor - W37

casehist.900 (49%)[Press space to continue, q to quit, h for help]

THIRD

DISTRICT COURT

450 SOUTH STATE STREET

SLC, UT 84111-1860

Before Judge: L. A. DEVER

JURY TRIAL.

Date: 07/28/1999

Time: 09:00 a.m.

Location: Third Floor - W37

THIRD DISTRICT COURT

450 SOUTH STATE STREET

SLC, UT 84111-1860

Before Judge: L. A. DEVER

05-12-99 JURY TRIAL scheduled on July 27, 1999 at 09:00 AM in Third

Floor - W37 with Judge DEVER.

karenwc

Printed: 09/18/01 08:13:16 Page 14

^L

CASE NUMBER 971021252 State Felony

casehist.900 (50%)[Press space to continue, q to quit, h for help]

05-12-99 JURY TRIAL scheduled on July 28, 1999 at 09:00 AM in Third
Floor - W37 with Judge DEVER. audreyj
05-12-99 Note: SCHEDULING CONFERENCE minutes modified. audreyj
05-12-99 Note: SCHEDULING CONFERENCE minutes modified. audreyj
05-12-99 Note: SCHEDULING CONFERENCE minutes modified. audreyj
05-24-99 Filed: Memorandum of Points & Authorities in Support of Motion
to Dismiss chandeei
05-24-99 Filed: Motion to Dismiss chandeei
06-10-99 Note: Calendar Judge assignment changed from L. A. DEVER to
ANTHONY B. QUINN for appearance on 07/27/1999 karenwc
06-16-99 Filed: Notice of expert report audreyj
06-16-99 Filed: Notice of hearing audreyj
06-21-99 MOTION TO DISMISS scheduled on July 12, 1999 at 10:30 AM in
Third Floor - W37 with Judge DEVER. audreyj
07-12-99 Minute Entry - Minutes for MOTION TO DISMISS audreyj
Judge: L. A. DEVER
PRESENT
Clerk: audreyj
Reporter: SCHULTZ, KATHLEEN
Prosecutor: ROD YBARRA
Defendant
casehist.900 (52%)[Press space to continue, q to quit, h for help] Defendant's
Attorney(s): D BRUCE OLIVER

Video

HEARING

State counsel requests additional time to respond in writing to
defendant's motion to dismiss.

Court orders State to file response by 7-19-99 at 5:00 pm. Defense
may file a rebuttal by 7-23-99 and then parties are ordered to
contact the court for a hearing on the motions.

07-19-99 Filed: state's memorandum in opposition to deft's motion to
dismiss debbiep
07-20-99 Note: Calendar Judge assignment changed from ANTHONY B. QUINN
to L. A. DEVER for appearance on 07/27/1999 karenwc
07-20-99 Note: JURY TRIAL calendar modified. audreyj
07-21-99 Filed: Plaintiff's proposed voir dire audreyj
07-21-99 Filed: plf's proposed voir dire debbiep
07-21-99 Filed: plf's requested jury instructions debbiep
07-22-99 Filed: Reply Memorandum Re: Motion to Dismiss chandeei

07-27-99 Minute Entry - Minutes for Jury Trial

audreyj

Judge: L. A. DEVER

PRESENT

casehist.900 (54%)[Press space to continue, q to quit, h for help]

Clerk: audreyj

Prosecutor: YBARRA, RODWICKE

Defendant not present

Printed: 09/18/01 08:13:21 Page 15

^L

CASE NUMBER 971021252 State Felony

Video

Tape Number: video Tape Count: 9-22-46

TRIAL

Court has been notified that defense counsel, Mr. Oliver is ill and unable to try this case today.

Defendant is not present and may have been notified by Mr. casehist.900 (55%)[Press space to continue, q to quit, h for help] Oliver's office that his presence was not required today.

Court will contact Mr. Oliver's office to ascertain whether or not the defendant was notified not to appear. If he was the court orders this case continued for pretrial on 9-13-99. If not, court orders bench warrant to issue, \$50,000

07-28-99 PRETRIAL CONFERENCE scheduled on September 13, 1999 at 10:00 AM in Third Floor - W37 with Judge DEVER. audreyj

07-29-99 Note: LAD/AKJ - CLERK NOTIFIED BRUCE OLIVER'S OFFICE OF NEW PRETRIAL DATE AND TIME. ATTORNEY'S OFFICE AGREED TO NOTIFY THE

DEFENDANT.

audreyj

08-03-99 Note: Bruce Oliver's office phoned and requested continuance of PTC. Clerk advised office of new date. ATD to notify state and

defendant. chandeei
08-03-99 PRETRIAL CONFERENCE rescheduled on October 04, 1999 at 09:00 AM
Reason: ATD requested continuance.. chandeei
08-04-99 PRETRIAL CONFERENCE scheduled on September 13, 1999 at 09:00 AM
in Third Floor - W37 with Judge DEVER. chandeei
08-04-99 Note: Dever/CDI. This matter was before the court regarding
ATD's telephonic request for a continuance of the September 13,
1999 pre trial conference. Court Orders this matter will not
be continued without a hearing or a written stipulated motion.
This chandeei
08-04-99 Note: case will remain set for a pre trial conference on
casehist.900 (57%)[Press space to continue, q to quit, h for help] September 13,
1999 at 9:00am. chandeei
09-13-99 JURY TRIAL scheduled on October 14, 1999 at 09:00 AM in Third
Floor - W37 with Judge DEVER. audreyj
09-13-99 JURY TRIAL scheduled on October 15, 1999 at 09:00 AM in Third
Floor - W37 with Judge DEVER. audreyj
09-13-99 Minute Entry - Minutes for Pretrial Conference audreyj
Judge: L. A. DEVER
PRESENT
Clerk: audreyj
Prosecutor: RODWICKE YBARRA
Defendant
Defendant's Attorney(s): ORSON WEST

Video
Tape Number: video Tape Count: 10-29-29

HEARING

Case set for trial by jury

JURY TRIAL is scheduled.

Date: 10/14/1999

Time: 09:00 a.m.

Location: Third Floor - W37

THIRD DISTRICT COURT

450 SOUTH STATE STREET

SLC, UT 84111-1860

Before Judge: L. A. DEVER

JURY TRIAL.

Date: 10/15/1999

Time: 09:00 a.m.

Location: Third Floor - W37

THIRD DISTRICT COURT

450 SOUTH STATE STREET

SLC, UT 84111-1860

casehist.900 (60%)[Press space to continue, q to quit, h for help] Before Judge: L.
A. DEVER

09-14-99 Filed order: Order for Continuance of September 13 Pre Trial chandeei
Judge ldever

Signed September 14, 1999

09-22-99 MOTIONS scheduled on October 08, 1999 at 10:00 AM in Third
Floor - W37 with Judge DEVER. debbiep

09-22-99 Note: Dever/dp On motion of atty Bruce Oliver's office, case
to be set for Hearing on all motions pending 10-8-99 at 10:00
am. They will send a notice to all parties of this date. debbiep

09-23-99 Filed: Notice of Hearing chandeei

10-08-99 Minute Entry - Minutes for DEFENSE MOTIONS audreyj

Judge: L. A. DEVER

PRESENT

Clerk: audreyj

Prosecutor: ROD YBARRA

Defendant

Defendant's Attorney(s): D BRUCE OLIVER

Video

Tape Number: video Tape Count: 10-33-57

HEARING

casehist.900 (62%)[Press space to continue, q to quit, h for help] Court finds that motions 2 and 4 have already been addressed by

Judge Bohling and will not be addressed again by this court.

Motion three has also been resolved.

Court denies defense motion to dismiss.

10-14-99 JURY TRIAL scheduled on January 06, 2000 at 09:00 AM in Third Floor - W37 with Judge DEVER. audreyj

10-14-99 JURY TRIAL scheduled on January 07, 2000 at 09:00 AM in Third Floor - W37 with Judge DEVER. audreyj

Printed: 09/18/01 08:13:27 Page 17

^L

CASE NUMBER 971021252 State Felony

10-14-99 Minute Entry - Minutes for Jury Trial audreyj

Judge: L. A. DEVER

PRESENT

Clerk:

Reporter: WAY, CARLTON

casehist.900 (63%)[Press space to continue, q to quit, h for help] Prosecutor:

YBARRA, RODWICKE

Defendant

Defendant's Attorney(s): D BRUCE OLIVER

TRIAL

TAPE: video On record

Exclusionary rule invoked

Opening Statement - State

Defense waives opening statement

Witness for State - Carmelita Cruz

Defense cross

State re-direct

Defense cross

State re-direct

TIME: OCT 15 Witness for State - Lashona Cruz
Defense cross
State re-direct
Defense cross
Witness for State - Tracie Garcia
No cross
Witness for State - Sonia Galvaiz Navarez
casehist.900 (65%)[Press space to continue, q to quit, h for help] No cross

Witness for State - Rosaelia Navarez
No cross
Witness for State - Debra Cruz
Defense cross
Stipulation placed on recourd outside presence of jury
Witness for State - Kim Scott Stewart
Defense cross
Defense cross
State rests
Defense motion to dismiss -- Denied
Witness for Defense - Pedro Cruz (Defendant)
Defense rests
Rebuttal witness for State - Debra Cruz
Defense cross examination
State rests
Jury instructed
State closing argument
Defense closing
State rebuttal
Jury excused to deliberate

casehist.900 (67%)[Press space to continue, q to quit, h for help]

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^L
CASE NUMBER 971021252 State Felony

TIME: OCT 18 COUNT: 4:53
Jury returns partial verdict - Not guilty as to count II

Jury is hung on counts I and III
Jury excused
Court orders case re-set for Jury trial
JURY TRIAL is scheduled.

Date: 01/06/2000

Time: 09:00 a.m.

Location: Third Floor - W37

THIRD DISTRICT COURT
450 SOUTH STATE STREET
SLC, UT 84111-1860

Before Judge: L. A. DEVER

JURY TRIAL.

casehist.900 (68%)[Press space to continue, q to quit, h for help]
01/07/2000

Date:

Time: 09:00 a.m.

Location: Third Floor - W37

THIRD DISTRICT COURT
450 SOUTH STATE STREET
SLC, UT 84111-1860

Before Judge: L. A. DEVER

10-18-99 Note: JURY TRIAL minutes modified.

audreyj

10-18-99 Note: JURY TRIAL minutes modified.

audreyj

11-01-99 Fee Account created Total Due: 350.00

joycer

11-01-99 REPORTER FEES Payment Received: 350.00 joycer

Note: REPORTER FEES

11-05-99 JURY TRIAL rescheduled on February 15, 2000 at 09:00 AM

Reason: On court's own motion.

audreyj

11-05-99 JURY TRIAL rescheduled on February 16, 2000 at 09:00 AM

Reason: On court's own motion.

audreyj

11-05-99 Note: LAD/AKJ - Trial rescheduled on court's motion. Both State
and Defense counsel notified by phone.

audreyj

01-04-00 Filed: Transcript of hearing on 10/14/99 and 10/15/99 annedl

01-05-00 Fee Account created Total Due: 137.50

joycer

01-05-00 REPORTER FEES Payment Received: 137.50 joycer

Note: REPORTER FEES

01-06-00 Filed: Motion to Dismiss Remaining Counts

bryceh

casehist.900 (70%)[Press space to continue, q to quit, h for help]01-06-00 Filed:

Memorandum in Support of Motion to Dismiss

bryceh

01-21-00 FINAL PTC / ARGUMENT MO DISM scheduled on February 14, 2000 at
10:00 AM in Third Floor - W37 with Judge DEVER.

audreyj

01-21-00 Note: LAD/AKJ - Defense counsel office agreed to notify the

Video

casehist.900 (74%)[Press space to continue, q to quit, h for help] TRIAL

On record
Information read and plea announced
Voir dire
Jury selected and sworn
Opening Statement - State
Defense reserves opening statement
Exclusionary rule invoked
Witness for State - Carmelita Cruz
Defense cross examination
State re-direct
Defense re-cross
State re-direct
Defense re-cross
Witness for State - Sonja Galvez-Nevarez
No cross
Witness for State - Tracy Garcia
No cross
Witness for State - Rosaelia Nevarez
No cross
Witness for State - Officer George Pregman
No cross

casehist.900 (76%)[Press space to continue, q to quit, h for help] Witness for State -
Debra Ann Bacon Cruz

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CASE NUMBER 971021252 State Felony

Defense cross examination
Witness for State - Lashawna Marie Cruz

No cross

Witness for State - Kim Scott Stewart

Defense cross examination

State redirect

Defense re-cross

State re-direct

Defense re-cross

EVENING RECESS

TIME: FEB 16 COURT RESUMES SESSION

Witness for State - Linda Young Lewis

casehist.900 (77%)[Press space to continue, q to quit, h for help]
examination

Defense cross

State re-direct

State rests

Witness for Defense - Sue Bryner-Brown

State cross examination

Witness for Defense - Kim Steward

No cross examination

Witness for Defense - Pedro Luis Cruz (defendant)

State cross examination

Defense re-direct

State re-cross

Defense re-direct

State re-cross

Defense re-direct

LUNCH RECESS

Preliminary jury instructions

State closing argument

Defense closing argument

State rebuttal

COUNT: 2:30

Jury deliberation begins at 2:30:21 pm

COUNT: 7:50

Jury returns a verdict of Guilty as charged to counts one and two.

casehist.900 (79%)[Press space to continue, q to quit, h for help]

Jury polled.

Presentence report ordered from AP&P

Defendant taken into custody pending sentencing

SENTENCING is scheduled.

Date: 03/27/2000

Time: 10:00 a.m.

Location: Third Floor - W37

THIRD DISTRICT COURT
450 SOUTH STATE STREET
SLC, UT 84111-1860

Before Judge: L. A. DEVER

02-15-00 Note: JURY TRIAL minutes modified.

audreyj

02-15-00 SENTENCING scheduled on March 27, 2000 at 10:00 AM in Third
Floor - W37 with Judge DEVER.

audreyj

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CASE NUMBER 971021252 State Felony

casehist.900 (80%)[Press space to continue, q to quit, h for help]

02-16-00 Note: JURY TRIAL minutes modified.

audreyj

02-16-00 Note: JURY TRIAL minutes modified.

audreyj

02-16-00 Note: JURY TRIAL minutes modified.

audreyj

02-16-00 Note: JURY TRIAL minutes modified.

audreyj

02-16-00 Note: JURY TRIAL minutes modified.

audreyj

02-18-00 Filed: Exhibit List

bryceh

02-29-00 Note: JURY TRIAL minutes modified.

audreyj

03-16-00 Filed: Victim Impact Statement

bryceh

03-23-00 Filed: Motion and order for continuance

debbiep

03-23-00 SENTENCING rescheduled on April 17, 2000 at 10:00 AM

Reason: ATD requested continuance..

audreyj

03-23-00 Note: LAD/AKJ - ATD Bruce Oliver's office called for an
extension of sentencing. Secretary claims that they have

recieved a verbal stipulation from R. Ybarra.

audreyj

03-27-00 Filed order: order for continuance

debbiep

Judge ldever

Signed March 23, 2000

04-04-00 Fee Account created Total Due: 146.25

joycer

04-04-00 REPORTER FEES Payment Received: 146.25

joycer

Note: REPORTER FEES

04-17-00 Minute Entry - Sentencing continued

audreyj

Judge: L. A. DEVER

casehist.900 (82%)[Press space to continue, q to quit, h for help]

PRESENT

Clerk: audreyj
Prosecutor: YBARRA, RODWICKE
Defendant
Defendant's Attorney(s): OLIVER, D BRUCE

Video
Tape Number: video Tape Count: 10-55-24

CONTINUANCE

The Defendant's counsel D BRUCE OLIVER has made a motion for continuance of Sentencing.

The motion is granted.

Sentencing cont on defense motion
HRG ON DEF MOTIONS is scheduled.

Date: 04/20/2000

Time: 03:30 p.m.

Location: Third Floor - W37

THIRD DISTRICT COURT
450 SOUTH STATE STREET
SLC, UT 84111-1860

Before Judge: L. A. DEVER

casehist.900 (84%)[Press space to continue, q to quit, h for help]

SENTENCING.

Date: 05/01/2000

Time: 09:00 a.m.

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CASE NUMBER 971021252 State Felony

Location: Third Floor - W37

THIRD DISTRICT COURT
450 SOUTH STATE STREET
SLC, UT 84111-1860

Before Judge: L. A. DEVER

SENTENCE PRISON

Based on the defendant's conviction of RAPE OF A CHILD a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than six years and which may be life in the Utah State Prison.

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casehist.900 (88%)[Press space to continue, q to quit, h for help]^L
CASE NUMBER 971021252 State Felony

Based on the defendant's conviction of SEX ABUSE CHILD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

Time on both counts to run consecutive to each other
SENTENCE RECOMMENDATION NOTE

Court orders that defendant have no contact with his children.

casehist.900 (90%)[Press space to continue, q to quit, h for help]

SENTENCE TRUST

The defendant is to pay the following:

Restitution: Amount: \$250.00 Plus Interest
Pay in behalf of: SALT LAKE POLICE DEPT
05-03-00 Filed: Notice of Appeal debbiep
05-03-00 Filed: Motion for transcripts and costs debbiep
05-03-00 Filed: Motion to stay sentence and application for certificate
of probable cause debbiep
05-03-00 Filed: memorandum in support of application for certificate of
probable cause debbiep
05-03-00 Filed: Motion to correct sentence audreyj
05-03-00 MOTION TO CORRECT SENTENCE scheduled on June 13, 2000 at 09:00
AM in Third Floor - W37 with Judge DEVER. audreyj
05-04-00 Filed: Notice of Hearing chandeei
05-10-00 Filed: affidavit of Juror Deanne James debbiep
05-11-00 Note: Forwarded Cert/Copy of Notice of Appeal to Court of
Appeals sophieo
05-18-00 Filed: Letter from Court of Appeals (Noa filed, Court of
Appeals No. 20000416-ca) sophieo
05-19-00 Filed: affidavit of impecuniosity debbiep
casehist.900 (92%)[Press space to continue, q to quit, h for help]06-13-00 Minute Entry -
Minutes for MOTION TO CORRECT SENTENCE audreyj
Judge: L. A. DEVER
PRESENT
Clerk: audreyj
Prosecutor: YBARRA, RODWICKE
Defendant
Defendant's Attorney(s): OLIVER, D BRUCE

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CASE NUMBER 971021252 State Felony

Video

Tape Number: video Tape Count: 9:26

HEARING

casehist.900 (93%)[Press space to continue, q to quit, h for help] Court hears oral argument from both parties.

Court denies certificate of probable cause.

Court grants State motion to strike the affidavit of juror from the record as improper.

After hearing argument as to the aggravating and mitigating circumstances, court declines to change the sentence as originally imposed.

Sentence will remain as originally imposed.

This hearing is on videotape of date 6-12-00

06-27-00 Judge MAUGHAN assigned. debrajoo

07-11-00 Filed: Second Notice of Appeal. shellyhf

07-18-00 Note: Cert/copy of Second Notice of Appeal given to Tasha at Court of Appeals susanc

07-27-00 Filed: Letter from Court of Appeals (Noa received, Court of Appeals No. 20000640-ca) sophieo

09-25-00 Filed: Letter from Court of Appeals - (Case transferred to Supreme Court) sophieo

09-25-00 Filed: Letter from Supreme Court (Case transferred to Court of Appeals) sophieo

09-26-00 Filed: Letter from Supreme Court (Case transferred from Court of Appeals to Supreme Court) sophieo

09-29-00 Filed: Letter from Supreme Court - Motion is granted to consolidate cases under 20000416-sc sophieo

casehist.900 (95%)[Press space to continue, q to quit, h for help]10-04-00 Filed: Reporter's Transcript of Proceedings - Jury Trial on 2/15/00 kathys

10-04-00 Filed: Reporter's Transcript of Proceedings: Jury Trial on 2/16/00 kathys

10-04-00 Filed: Reporter's Transcript of Proceedings, Hearing on Motions, April 20, 2000 sophieo

10-06-00 Filed order: Order re: Transcript costs debbiep
Judge Idever
Signed October 11, 2000

10-11-00 Filed: Reporter's Transcript of Proceedings: Sentencing Hearing on 05/01/00 kathys

10-16-00 Filed: Letter from Supreme Court (Case transferred to Court of Appeals) sophieo

10-17-00 Filed: Court of Appeals letter to D. Bruce Oliver (COA # 20000416-CA) -Case assigned to Court of Appeals kathys

10-18-00 Filed order: Order Re: Transcript Costs debbiep

Judge Idever

Signed October 17, 2000

10-30-00 Filed: Transcript Request/Billing Statement

kathys

10-30-00 Filed: Reporter's Partial Transcript of Proceedings on October

casehist.900 (97%)[Press space to continue, q to quit, h for help]

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CASE NUMBER 971021252 State Felony

14 & 15, 1999

kathys

11-08-00 Filed: Certificate of Filing Completed Transcript: Proceedings

held on 1/15/98, 7/20/98, 4/26/99 and 10/8/99 (in one volume) kathys

11-08-00 Filed: Reporter's Transcript of Proceedings (4 hearing

transcripts are in one volume): Preliminary hearing 01/15/98,

Pretrial 07/20/98, Motion Hearing 04/26/99, Motion Hearing

10/08/99

kathys

12-04-00 Trust Account created Total Due: 14.39 joycer

12-04-00 Fee Account created Total Due: 14449.00 joycer

12-04-00 REPORTER FEES Payment Received: 14,449.00 joycer

Note: REPORTER FEES

12-04-00 Fee Account created Total Due: 45.50 joycer

12-04-00 REPORTER FEES Payment Received: 45.50 joycer

Note: REPORTER FEES

12-05-00 REPORTER FEES Payment Reversal: -14,449.00 sunshinb

Note: s/b \$1449.00 cashier put in as \$14449.00. Will

casehist.900 (98%)[Press space to continue, q to quit, h for help] re-enter.

12-05-00 Fee Account created Total Due: 1449.00 sunshinb

12-05-00 REPORTER FEES Payment Received: 1,449.00 sunshinb

Note: REPORTER FEES

01-30-01 Fee Account created Total Due: 59.50 joycer

01-30-01 REPORTER FEES Payment Received: 59.50 joycer

Note: REPORTER FEES

02-20-01 Note: INDEXED: RECORD & INDEX FORWARDED TO COURT OF APPEALS:

cert. copy of Index, 3 files, 7 transcripts, 1 envelope

exhibits

kathys

casehist.900 (99%)[Press space to continue, q to quit, h for help]